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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,253	10/31/2000	Marrie Harras	LEX-0081-USA	1776

7590 05/05/2003

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EXAMINER

LANDSMAN, ROBERT S

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 05/05/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/703,253

Applicant(s)

HARRAS ET AL.

Examiner

Robert Landsman

Art Unit

1647

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 18 March 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1 and 5-7.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

under 35 USC 101 ^{OK}
5/12/03

Continuation of 10. Other: Claims 1 and 5-7 remain rejected for the reasons already of record on pages 2-3 of the Office Action dated 12/18/02. Applicants' arguments have been considered, but are not deemed persuasive. Applicants have shown that two sequences, one by Tammur et al. and the other by Yabuuchi, are approximately 86% identical to SEQ ID NO:23 of the present invention and that this represents a splice variant of the prior art. Applicants also argue that these prior art references show that these transporters are ABCC11, isoforms, protein 8. Applicants also argue that Pearson et al. (Accession No NP_660187) teach an ABC11 transporter which is a splice variant of SEQ ID NO:23 of the present invention. First, respectfully, post-filing references can only be used to support an asserted utility in the specification. Applicants have only disclosed in their specification that the protein of the present invention was believed to be an MDR protein. there was no disclosure that this protein belonged to the ABCC11 family. This was determined after the filing of the present application. In addition, the fact that Applicants did not initially disclose (in an IDS) that this variant was believed to be a splice variant of the Pearson et al. protein demonstrates that Applicants did not know of this reference at the time of filing and, therefore, did not know that the protein of the present invention was a variant of a known protein, thereby supporting the Examiner's position that the utility was not known at the time of filing. .

ROBERT LANDSMAN
PATENT EXAMINER